

No. 11140

---

United States  
Circuit Court of Appeals  
For the Ninth Circuit.

---

BERNARD G. SHEPHERD,

Appellant,

vs.

MILDRED McDONALD, now MILDRED MUCK,  
Appellee.

---

Transcript of Record

---

Upon Appeal from the District Court of the United States  
for the District of Oregon

FILED

OCT 25 1945

PAUL P. O'BRIEN,  
CLERK



No. 11140

---

United States  
Circuit Court of Appeals

For the Ninth Circuit.

---

BERNARD G. SHEPHERD,

Appellant,

vs.

MILDRED McDONALD, now MILDRED MUCK,

Appellee.

---

Transcript of Record

---

Upon Appeal from the District Court of the United States  
for the District of Oregon



# INDEX

---

[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in *italic*; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in *italic* the two words between which the omission seems to occur.]

	PAGE
Adoption of Statement of Points and Designation of Record on Appeal .....	63
Appeal:	
Bond on .....	38
Certificate of Clerk to Transcript of Record on .....	61
Designation of Portions of Record on....	40
Statement of Points to be Relied on.....	41
Statement of Points and Designation of Record on (CCA) .....	63
Bond on Appeal .....	38
Certificate of Clerk to Transcript of Record on Appeal .....	61
Certificate of Referee on Petition of Bankrupt for Review of Referee's Order Qualifying Bankrupt's Discharge .....	2
Discharge of Bankrupt .....	28
Motion to Strike Third Specification of Objection and Order Denying Motion..	10
Opinion of Referee .....	12

Index	Page
Order Denying First and Second Specifications of Objection to Bankrupt's Discharge and Taking under Advisement the Third Specification .....	11
Petition for Review of Referee's Order Qualifying the Discharge of the Bankrupt .....	30
Specification of Objections to Discharge and Petition for Refusal .....	4
Decision of District Judge .....	36
Designation of Portions of Record (DC).....	40
Designation of Portions of Record, Statement of Points and (CCA) .....	63
Exhibits:	
1—(Objector's) Judgment in No. 114-088 in Circuit Court of the State of Oregon for the County of Multnomah.....	45
2—(Objector's) Agreement, June 10, 1929, by and between Lorenzo Mansfield, B. G. Shepherd and Mildred McDonald..	55
6—(Bankrupt's) Discharge of Bankrupt..	58
7—(Bankrupt's) Creditors whose Claims are Unsecured .....	59
Memo Decision of District Judge .....	36
Notice of Appeal .....	37
Names and Addresses of Attorneys.....	1

<b>Index</b>	<b>Page</b>
Order of District Court Affirming Referee's Order Discharging Bankrupt with Qualifica- tions . . . . .	36
Statement of Points to be Relied on (DC) . . . .	41
Statement of Points and Designation of Rec- ord on Appeal (CCA) . . . . .	63





NAMES AND ADDRESSES OF ATTORNEYS  
OF RECORD

CHRISTOPHERSON & MATTHEWS and  
PAUL M. LONG

514 Broadway Building  
Portland 5, Oregon

COAN & ROSENBERG

RALPH A. COAN

710 Pittock Block  
Portland 5, Oregon  
For Appellant

W. ELLIS RICHARDSON

Alisky Building  
Portland 4, Oregon

MOE TONKON

817 Public Service Building  
Portland 4, Oregon  
For Appellee

In the District Court of the United States  
for the District of Oregon

No. B-26580

In the Matter of  
BERNARD G. SHEPHERD,  
Bankrupt.

Certificate of Referee on Petition of Bankrupt  
for Review of Referee's Order Qualifying  
Bankrupt's Discharge by Excluding the Debt  
of Mildred Muck, Objecting Creditor

To the Honorable James Alger Fee and Claude  
McColloch, Judges of the Above Entitled  
Court:

Estes Snedecor, the referee in bankruptcy in charge of this proceeding, hereby makes this his certificate on the petition of Bernard G. Shepherd, bankrupt herein, for a review of the referee's order entered March 3, 1945, which qualified the discharge of the bankrupt by excepting from the operation of the discharge the debt owing to Mildred McDonald, now Mildred Muck, on which the bankrupt had waived a discharge obtained in a former bankruptcy.

### QUESTIONS PRESENTED

In a last analysis, the only question presented is whether a bankrupt, after having obtained a discharge from a debt in a prior proceeding and having revived the debt by waiving his discharge, may receive another discharge, over the objection

of the creditor, from the same debt in a new proceeding brought more than six years after the first discharge. Reference is made to the petition for review for a statement of the particulars in which it is claimed the referee erred in denying the bankrupt a discharge from the particular debt mentioned.

### FACTS

The facts are undisputed and are set forth on pages 2 and 3 of the referee's opinion. Inasmuch as the facts involved in the particular issue before the court are not disputed and are matters of record in this court and in the Circuit Court of the State of Oregon for the County of Multnomah, it is deemed unnecessary to transcribe and certify the testimony taken before the referee. [1\*]

### PAPERS SUBMITTED

Transmitted herewith are the following papers:

1. Specifications of Objections to Discharge and Petition for Refusal, filed May 4, 1942.
2. Amended Specifications of Objections to Discharge and Petition for Refusal, filed August 7, 1944.
3. Motion to Strike Third Specification of Objection and Order Denying Motion, filed August 7, 1944.
4. Order Denying Leave to File Amended Specifications of Objection to Discharge, entered August 25, 1944.

---

\* Page numbering appearing at foot of page of original Reporter's Transcript.

5. Order Denying First and Second Specifications of Objection to Bankrupt's Discharge and Taking under Advisement the Third Specification, entered August 28, 1944.

6. Objector's Exhibits 1 and 2, and Bankrupt's Exhibits 6 and 7.

7. Referee's Opinion, filed March 3, 1945.

8. Qualified Discharge of Bankrupt, original of which is already on file with the clerk of this court.

9. Bankrupt's Petition for Review of Referee's Order Qualifying the Discharge of the Bankrupt, filed March 7, 1945.

Dated at Portland, Oregon, this 7th day of March, 1945.

Respectfully submitted,

ESTES SNEDECOR

Referee in Bankruptcy

[Endorsed]: Filed March 7, 1945. Estes Snedecor, Referee in Bankruptcy.

[Endorsed]: Filed March 7, 1945. Lowell Mundorff, Clerk. [2]

---

i[Title of District Court and Cause.]

SPECIFICATIONS OF OBJECTIONS TO DISCHARGE AND PETITION FOR REFUSAL

Mildred Muck, formerly Mildred McDonald, in the County of Multnomah, in the State of Oregon, a Creditor of said bankrupt, does hereby oppose the granting to said Bernard G. Shepherd of a dis-

charge from his debts; and for the grounds of such opposition does file the following specifications:

### FIRST SPECIFICATION

That on or about the 16th day of December, 1941, whilst a bankrupt and after the appointment and qualification of a trustee, George P. Clark, the above named bankrupt knowingly and fraudulently concealed the following assets belonging to the estate from said trustee, to-wit: one 1941 Cadillac sedan automobile motor No. 6341044 bearing Oregon license No. 152-613 for the year 1942; one man's ring with a large diamond setting, and all of his interest in all of the property, real and personal, left by Tho. H. Shepard, who died in the State of Alabama in 1933, which estate was left by will dated January 10, 1933, whereby the said Tho. H. Shepard left all of his estate to Nannie Shepard to have and to hold during her life or widowhood and upon her remarriage or upon her death all of his property to be divided equally between Bernard Shepard (Shepherd), this bankrupt, and Lewis Shepard, share and share alike. That said automobile and diamond ring at the time of the appointment and qualification of the trustee herein were being held on secret trust by Mary Shepherd, wife of the bankrupt.

Said bankrupt knowingly and fraudulently omitted all of said property from his schedule of assets herein, and failed to reveal to said trustee the existence of the same or the facts as to the title [3] thereto and fraudulently and knowingly con-

cealed said property, so as aforesaid belonging to his estate, whilst such bankrupt, from his said trustee.

## SECOND SPECIFICATION

That on or about the 16th day of December, 1942, in this bankruptcy proceedings, Bernard G. Shepherd, the bankrupt herein, knowingly and fraudulently made a false oath in relation to said proceedings in bankruptcy, as follows, to-wit: said bankrupt omitted the following property from his schedule and yet did then and there knowingly and fraudulently make oath to said schedules that they were a true statement of his assets and that after being duly sworn on general examination stated that he never at any time signed any statement to the effect that he was the owner of any automobile since 1931, including the 1938 Cadillac sedan automobile heretofore mentioned herein. That he was not the owner of said 1941 Cadillac sedan, and that he had assigned his interest in and to all of his share of the estate to Tho. H. Shepard, deceased, whereas in truth and in fact as said bankrupt well knew, he had signed a bill of sale stating that he was the legal owner of said 1938 Cadillac automobile and had a right to sell same and whereas, in truth and in fact as said bankrupt well knew, he had made no legal transfer of his interest in said estate of Tho. H. Shepard, deceased. Said testimony was material and it pertained to the discovery of the acts, conduct and property of the bankrupt in that said property

so admitted and testified to was and is his property and was of value.

### THIRD SPECIFICATION

Heretofore and on the 27th day of June 1931, the bankrupt herein was duly adjudged a bankrupt in the District Court of the United States for the District of Oregon in proceeding No. B-16240 closing file No. 15751, which cause was thereupon duly referred to the Honorable A. M. Cannon, referee and in which proceeding the bankrupt was thereafter on the 21st day of October, 1931, duly discharged of all of his debts except such as were then by law excepted therefrom. [4]

In his schedule filed in said proceeding No. B-16240 the Bankrupt scheduled in schedule "A" thereof, among other creditors and claims, the following:

Mildred McDonald contract in 1929 re various notes and open account as a partner of Lorenzo Mansfield doing business as Lorenzo-Mansfield Studios—\$2600.00.

The said Mildred McDonald, (now Mildred Muck), named in said schedule "A" as creditor of the bankrupt is the identical individual as the objecting creditor in the instant proceeding. Subsequent to his adjudication in bankruptcy in said proceeding No. B-16240 and subsequent to his discharge the bankrupt promised and agreed to pay to this objecting creditor the claim so scheduled and discharged. Thereafter, and on the 7th day of February, 1935, the Circuit Court of the State



of Oregon, for the County of Multnomah, duly made and entered its judgment according to law upon the verdict of a jury on the prayer of the complaint on this objecting creditor in favor of this creditor and against the bankrupt, that the bankrupt was indebted to this creditor, upon said promise to pay said scheduled and discharged claim in the amount of \$2,543.95, with interest thereon from June 10, 1930 at the rate of 6% per annum and costs taxed in the sum of \$32.25, which said judgment is the judgment referred to and described in schedule "A" in the bankrupt schedule in the instant proceeding.

Said Circuit Court of the State of Oregon, for the County of Multnomah was at all times mentioned herein and is now a Court of general jurisdiction of the State of Oregon and had jurisdiction of the subsequent matter of the action in which said judgment was rendered. In said action the bankrupt appeared personally and by his attorney and submitted his person to the jurisdiction of said court.

This objecting creditor is the only unsecured creditor listed in schedule "A" of the Bankrupt's schedules herein.

Said judgment is the identical claim discharged in said [5] proceeding No. B-16240, which said discharge has been waived by the bankrupt, and the bankrupt cannot again seek nor secure a discharge of said claim.

MILDRED MUCK

Claimant



State of Oregon,  
County of Multnomah—ss.

I, Mildred Muck, being first duly sworn, depose and say: That I am the claimant in the above entitled matter; that I have read the foregoing petition, know the contents thereof and believe the same to be true.

MILDRED MUCK

Subscribed and sworn to before me this 4th day of May, 1942.

[Seal]

JOHN D. GALEY

Notary Public for Oregon

My Commission Expires March 20, 1943.

State of Oregon,  
County of Multnomah—ss.

Due and legal service of the foregoing objections is hereby admitted in Multnomah County, Oregon, this 4 day of May 1942.

PAUL M. LONG

Of Attorneys for Bankrupt

[Endorsed]: Filed May 4, 1942. Estes Snedecor, Referee in Bankruptcy.

[Endorsed]: Filed March 7, 1945. Lowell Mundorff, Clerk. [6]

[Title of District Court and Cause.]

MOTION TO STRIKE THIRD SPECIFICA-  
TION OF OBJECTION AND ORDER  
DENYING MOTION

Comes now Bernard G. Shepherd, the above named bankrupt, and moves this Court to strike the third specification of objection filed herein to the bankrupt's discharge on the ground and for the reason that said third specification does not state any facts sufficient to support or permit the granting of an order denying a discharge to the bankrupt in this proceeding.

COAN & ROSENBERG

Of Attorneys for Bernard G.  
Shepherd, Bankrupt

This motion having come on for hearing before the undersigned Referee on August 7, 1944, and the court having considered argument of counsel,

It Is Ordered that the foregoing motion be denied.

ESTES SNEDECOR

Referee in Bankruptcy

[Endorsed]: Filed August 7, 1944. Estes Snedecor, Referee in Bankruptcy.

[Endorsed]: Filed March 7, 1945. Lowell Mundorff, Clerk. [7]

[Title of District Court and Cause.]

ORDER DENYING FIRST AND SECOND  
SPECIFICATIONS OF OBJECTION TO  
BANKRUPT'S DISCHARGE

This Court having set for hearing the specifications of objection to the bankrupt's discharge on the 7th day of August, 1944 at the hour of 2:00 P. M., at the court room of this court, the United States Courthouse, Portland, Oregon, the objecting creditor, Mildred Muck appearing in person and by and through her attorney, W. E. Richardson, and the bankrupt appearing in person and by and through his attorney, Ralph A. Coan, and the Court, having heard the testimony of the objecting creditor in support of said specifications of objection, and the evidence offered by the bankrupt in opposition thereto, finds:

That there is no evidence in support of specification one and two, designated as first and second specification of objection, and;

It Is Therefore Ordered that the first and second specification of objection be and the same are hereby denied, disallowed and overruled.

It Is Further Ordered that the Court does take under advisement the third specification of objection.

ESTES SNEDECOR

Referee

Dated this 28th day of August, 1944.

[Endorsed]: Filed August 28, 1944. Estes Snedecor, Referee in Bankruptcy.

[Endorsed]: Filed March 7, 1945. Lowell Mundorff, Clerk. [8]

---

[Title of District Court and Cause.]

### REFEREE'S OPINION

This cause came on for hearing August 7, 1944, upon specifications of objection of Mildred Muck, a creditor, to the discharge of the bankrupt. Each appeared in person and by counsel. At the outset, the objecting creditor presented and asked leave to file amended specifications. The bankrupt moved to strike the third specification as originally filed.

The amended specifications consisted of a reiteration of the original three specifications and a new one designated "Fourth Specification". The latter contained allegations of fact not mentioned in the original specifications and constituted an attempt to set up a new and additional ground for the denial of bankrupt's discharge. The time for filing specifications had long since expired. The referee denied the motion for leave to file the amended

specifications. Collier on Bankruptcy, 14th Ed. Section 14.07, Page 1276; In re Johnson (D. C., S. D.) 192 Fed. 356, 27 A.B.R. 644; In re Hurowitz (D. C. Mass.) 14 F. Supp. 71, 28 A.B.R. (N. S.) 479; In re Gagliardi (D. C. N. Y.) 36 A.B.R. (N.S.) 326; Northeastern Real Estate Corporation v. Goldstein, 91 F. (2d) 942, 34 A.B.R. (N. S.) 652; In re Martina (D. C. N. Y.) 47 A.B.R. (N.S.) 182.

The referee also denied bankrupt's motion to strike the third specification. Reasons for the latter ruling will be discussed later.

After hearing the testimony and considering the evidence offered in support of the first and second specifications the referee ruled in open court that there was no competent evidence to sustain [9] the allegations. Thereafter an order was entered denying and overruling the first two specifications of objection.

The referee took under advisement the third specification and requested briefs; which now have been duly considered.

The third specification raises a question of first impression under the Bankruptcy Act. The question is, may the bankrupt, after having obtained a discharge from a debt in a prior proceeding and having revived the debt by waiving his discharge, receive another discharge from the same debt in a new proceeding brought more than six years after the first discharge.

The undisputed facts are: The bankrupt was duly adjudged a bankrupt upon a voluntary petition filed June 26, 1931. Thereafter on October 21, 1931, he

was granted a discharge. (Bankrupt's Petition 6). He listed as one of his creditors Mildred McDonald, now Mildred Muck, the objecting creditor herein. The bankruptcy schedules show that the bankrupt was indebted to this creditor on notes signed by him in the sum of approximately \$2600. (Bankrupt's Exhibit 7).

On June 5, 1934, Mildred Muck brought an action in the Circuit Court of the State of Oregon against the bankrupt to recover the amounts owing on said promissory notes. The defendant answered by admitting that he was indebted in the amount alleged but, as an affirmative defense, set up his discharge in bankruptcy. The plaintiff in her reply admitted the discharge, but alleged affirmatively that after the bankrupt had filed his petition in bankruptcy and prior to his discharge, he had expressly promised and agreed to pay the notes; that he had stated that he had listed her as a creditor because he was required to do so, but that she could disregard the bankruptcy. She alleged further that pursuant to the agreement he had paid certain sums on account thereof before and after his discharge. A jury trial upon these issues resulted in a verdict and judgment thereon, entered August 7, 1935, for the full amount then [10] owing on said notes in the sum of \$2543.95 with interest thereon at the rate of 6% per annum and costs.

On December 16, 1941, Bernard G. Shepherd filed a second bankruptcy proceeding in which the only unsecured creditor listed is Mildred Muck, the objecting creditor. In her third specification,



the objecting creditor set forth substantially the foregoing facts and stated that her claim evidenced by the judgment based upon the bankrupt's promissory notes is the same obligation from which the bankrupt received a discharge in the former proceeding. She contends that the bankrupt having once waived the right to a discharge in bankruptcy on a debt cannot have another discharge on the same debt.

Neither counsel nor the referee has been able to find a reported case precisely in point. In searching for an analogous situation we find a long list of authorities holding without exception that where a bankrupt, prior to the Chandler Act, failed to apply for a discharge or to pay the costs of the proceedings thereon, he is forever barred from a discharge on the same debts in a subsequent proceeding. *Kuntz v. Young* (C.C.A. 8th) 131 Fed. 719, 12 A.B.R. 505; *In re Kuffler* (C.C.A. 2nd) 151 Fed. 12, A.B.R. 16; *Pollet v. Cosel* (C.C.A. 1st) 179 Fed. 488, 30 L.R.A. (N.S.) 1164, 24 A.B.R. 678; *In re Loughran* (C.C.A. 3rd) 218 Fed. 619, 33 A.B.R. 350; *Hill v. R. R. Industrial Finance Co.* (C.C.A. 10th) 92 F. (2d) 973, 35 A.B.R. (N.S.) 304; *In re Bacon* (C.C.A. 5th) 193 Fed. 34, 27 A.B.R. 737; *Horner v. Hamner* (C.C.A. 4th) 249 Fed. 134, 40 A.B.R. 817; *In re Schwartz* (C.C.A. 2d) 89 F. (2d) 172, 33 A.B.R. (N.S.) 673; *Perlman v. 322 West 72nd Street Co., Inc.*, (C.C.A. 2d) 127 F. (2d) 716, 49 A.B.R. (N.S.) 212; *People's Loan and Savings Company v. Charles Emmett Dowdle* (C.C.A. 5th) 92 F. (2d) 442, 34 A.B.R.

(N.S.) 747; Colwell v. Epstein (C.C.A. 1st) 142 F. (2d) 138, 56 A.B.R. (N.S.) 97; Freshman v. Atkins, 269 U. S. 121, 123, 46 S. Ct. 41, 70 L. Ed. 193, 6 A.B.R. (N.S.) 744; Collier on Bankruptcy Par. 14.05, p.p. 1262-1264.

The reasoning employed in most of these cases is well summarized [11] in a recent decision of the United States Circuit Court of Appeals, First Circuit, as follows: "The reasons given for those decisions were the time limitation in the statute itself and the doctrine of *res judicata*. In them the courts pointed out that to grant a discharge in the second proceeding from debts provable in the earlier proceeding where no application for discharge had been made, would empower the bankrupt effectively to evade the statutory limitation and place within his control the time when he should act. This would operate as an enlargement of the time limit prescribed in the statute and would interfere with the speedy administration of the bankrupt estate. It would be contrary to the spirit and purpose of the statute. They also said that where the bankrupt fails to petition for a discharge the result is in effect a judgment by default in favor of his creditors that he was not entitled to a discharge from their claims. Such a judgment is as forceful as a judgment after trial and is conclusively *res judicata* between him and the creditors whose claims are listed in the bankruptcy schedules. The result is that the issue presented in the second petition is the same as that which existed in the first and which had been decided against him



and in favor of his creditors." *Colwell v. Epstein et al.*, 142 F. (2d) 138, 56 A.B.R. (N.S.) 97.

The courts have adhered strictly to this rule no matter how extenuating the circumstances may have been that caused the bankrupt to fail or neglect to prosecute his initial proceeding for a discharge. It is not an exaggeration to state that nearly all such defaults were the result of carelessness upon the part of counsel or the bankrupt occasioned in turn by an utter lack of appreciation of the final consequences of their inaction or indifference. A number of decisions stress the point that the only object of a bankruptcy proceeding in a no asset case is to obtain a discharge. If a bankrupt fails to prosecute the proceeding, he is barred from bringing another proceeding for a discharge of the same debts. Such a course amounts [12] to an abuse of the process of the court and will not be countenanced. *In re Fiegenbaum* (C.C.A. 2nd) 121 Fed. 69, 9 A.B.R. 595; *Freshman v. Atkins*, *supra*; *In re Vardell* (D.C. Tenn.) 28 A.B.R. (N.S.) 697; *Perlman v. 322 West 72nd Street Co., Inc.*, *supra*.

If such is the attitude of the courts toward a bankrupt who is indifferent to the relief available to him under the Act, should we expect them to assume a different attitude toward a bankrupt who obtains full relief under the Act and simultaneously waives his discharge on a particular debt? Does it not logically follow that having waived the benefits of the Act as to a particular debt he cannot again seek relief from the same obligation? "It is the purpose of the Bankruptcy Act to convert

the assets of a bankrupt into cash for distribution among his creditors, and then to relieve the honest debtor from the weight of oppressive indebtedness, and permit him to start afresh free from the obligations and responsibilities consequent upon business misfortunes." *Williams v. U. S. Fidelity Co.*, 236 U. S. 549, 35 S. Ct. 289, 59 L. Ed. 713, 34 A.B.R. 181.

In the case before us the bankrupt was accorded full relief in the first bankruptcy from oppressive obligations resulting from business misfortunes. Having waived his right to relief from a particular debt, he is forever barred from seeking again like relief from the same obligation.

The bankrupt, by his motion to strike the third specification, contends that he is entitled to a discharge from all his provable debts unless the specification invokes one of the causes for a denial of a discharge as defined in Section 14c of the Act. It has long been the recognized practice of the bankruptcy court, upon motion of a proper party, or on its motion if the facts appear from its records, to qualify a discharge by excluding debts on which the bankrupt is barred from obtaining relief. *Bluthenthal v. Jones*, 208 U. S. 64, 52 L. Ed. 390, 19 A.B.R. 288; *In re Zeiler* (D.C. N.Y.) 18 F. Supp. 539, 33 A.B.R. (N.S.) 627; *In re Epstein* (D.C. Cal.) 12 F. Supp. [13] 450, 27 A.B.R. (N.S.) 319; *In re Summer* (C.C.A. 2nd) 107 F. (2d) 396, 41 A.B.R. (N.S.) 246; cert. den. 309 U. S. 680, 60 S. Ct. 718, 84 L. Ed. 1024; *In re Early* (E.D. Pa.) 34 F. Supp. 774, 43 A.B.R. (N.S.) 518; *In re*

Tucker (E.D. N.Y.) 49 F. Supp. 239, 53 A.B.R. (N.S.) 106.

In Collier on Bankruptcy, 14th Edition, Par. 14.62, p. 1381, 1944 Supplement, it is stated: "This practice represents in effect the sole exception to the well settled general rule that a bankruptcy court will not determine the dischargeability of individual claims, and that such questions must be litigated in other appropriate forums when the discharge is pleaded as a defense."

This case falls within the exception. The specifications goes farther than to point out a ground for the denial of a discharge. It challenges the bankrupt's right to any relief as to the particular debt. It draws the court's attention to the fact that the bankrupt had previously obtained relief under the Bankruptcy Act from the debt and had expressly waived all rights under the Act. In cases where it appeared that all debts scheduled were listed in a prior proceeding in which the bankrupt failed to obtain a discharge, the court dismissed the second proceeding or denied the discharge altogether. In *re Stone* (D.C. Oregon) 174 Fed. 947, 23 A.B.R. 24; *Perlman v. 322 West 72nd Street Co., Inc.*, *supra*; *Kuntz v. Young*, *supra*. In cases where the bankrupt had incurred new liabilities since his first proceeding, his discharge was qualified by excepting the debts listed in the former proceeding. In *re Loughran*, *supra*; In *re Summer*, *supra*; In *re Zeiler*, *supra*; In *re Brown* (D.C. N.H.) 35 F. Supp. 619, 47 A.B.R. (N.S.) 539. In the case before us the bankrupt listed only the

one unsecured creditor, but scheduled another creditor holding a note and mortgage on real property which he signed with his wife in 1941. Presumably he is entitled to a discharge from personal liability on the mortgage debt. Accordingly the proper procedure is to enter a qualified discharge, excepting the debt of the objecting creditor as undischageable. [14]

Counsel for the bankrupt argues with much force that the promise to pay the discharged debt creates an entirely new and distinct obligation which is dischargeable in a subsequent bankruptcy. He cites a recent decision of the United States District Court (Western District of Kentucky) 33 Fed. Supp. 976, 47 A.B.R. (N.S.) 668, in which the Court said: "The present case is therefore subject to the well settled rule that a discharge in bankruptcy, while releasing the bankrupt from liability to pay a debt that was provable in bankruptcy, leaves him under a moral obligation sufficient to support a new promise to pay the debt, regardless of whether the new promise was made before or after the discharge in bankruptcy. Posey v. Mayer's Adm'r, 3 Ky. Law Rep. 613; Eckler v. Galbraith, 12 Bush (Ky) 71; Tolle v. Smith's Ex'r, 98 Ky. 464, 33 S. W. 410; Brashears v. Combs, 39 Am. B. A. 98, 174 Ky. 344, 192 S. W. 482. It is not clear, however, whether the cause of action is upon the old promise with the discharge in bankruptcy waived by the new promise, or is upon the new promise as a separate and new obligation supported by moral consideration, as an

exception to the general rule of consideration. The authorities throughout the country are in conflict on this issue with the weight in favor of the view that the action lies upon the new promise. See 3 R.C.L., Bankruptcy, Sec. 147; 8 Corpus Juris Secundum, Bankruptcy, Sec. 583, subdivision (d)."

In the first place this contention is not in accord with the facts in the case before us. The objecting creditor's claim is based upon a judgment obtained in an action for the recovery of money owing on certain notes scheduled in the previous bankruptcy. The bankrupt answered by admitting the obligation and setting up his discharge as a defense in bar. The creditor replied, by way of avoidance, that the bankrupt had waived his discharge by agreeing to pay the debt notwithstanding his bankruptcy. Remington on Bankruptcy, Fifth Edition, states: "The new promise need not be pleaded or proved in the first instance. To do so would be to anticipate a defense. The [15] bar of the discharge is merely matter of defense to be pleaded. If pleaded, then the new promise is in turn to be pleaded, by way of avoidance." Section 3512, p. 675; Gruenberg v. Trainor, 81 N. Y. Supp. 675, 11 A.B.R. 776. The reduction of the creditor's notes to judgment served merely to change the form of the debt but did not make a new or different one. In re Summer (C.C.A. 2d) 107 F. (2d) 396; 41 A.B.R. (N.S.) 246; In re Kuffler, 168 Fed. 1021; cert. den. 214 U. S. 520; In re Schnabel, 166 Fed. 383.

We are thus faced with the fact that the judgment from which the bankrupt seeks a discharge



in his second bankruptcy represents the same debt scheduled in his former bankruptcy. In *United States National Bank of La Grande v. Miller*, 118 Or. 280, 246 Pac. 726, it was held that an action to recover a debt discharged in bankruptcy may be based either on the original debt or on the new promise. In *Parker v. Smith*, 143 Wash. 677, 255 Pac. 1026, it was held that an oral promise to pay a promissory note discharged in bankruptcy revives the obligation as a whole and recovery may be had upon the original note, including the provision for an attorney's fee. To like effect are: *Pierce v. Fleming*, 205 Ia. 1281, 217 N.W. 860; *Stern v. Bradner Smith & Co.*, 225 Ill. 430, 80 N.E. 307, 116 Am. St. R. 151; *Badger v. Gilmore* 33 N.H. 361, 66 Am. D. 729; *McClintic-Marshall Co. v. City of New Bedford*, 239 Mass. 216, 131 N.E. 444; *DeWalt v. Heeren*, 197 N.W. 868, 50 N.D. 804; *Herrington v. Davitt*, 220 N.Y. 162, 115 N.E. 476, 1 A.L.R. 1700. In the latter case the court said: "The right of action is given by a new and efficacious promise. The practice of bringing the action upon the original demand is, however, sanctioned by usage. The discharge in bankruptcy is, under such practice, regarded as a discharge of the debt sub modo only, and the new promise as a waiver of the bar to the recovery of the debt created by the discharge. The new promise, with such other facts as are essential to constitute it a valid cause of action, may, however, be alleged." This case is significant in that New York is one of the few states [16] requiring a promise to pay

a discharged debt to be in writing. Notwithstanding this requirement the New York Court of Appeals, of which Mr. Justice Cardozo was then a member, held, "The action was properly brought upon the note. For the purpose of the remedy, the original debt might still be considered the cause of action."

Collier on Bankruptcy, 14th Edition, in dealing with the question of the revival of a discharged debt by a new promise, states: "The general rule is that a discharge affects only the remedy of the creditor and the obligation itself is not cancelled. It now remains to be seen whether the remedial bar of a discharge may be removed in any way. The Bankruptcy Act does not provide for the revival of debts discharged in bankruptcy. The law in the various states governs this matter, and it is generally agreed that the bar of a discharge may be waived by the making of a new promise. In reaching this decision, the courts have employed various theories; some courts have found consideration for the new promise in the form of a past legal obligation plus a present moral obligation, while other courts have declared that no new consideration is necessary to support the waiver." Par. 17.33, Page 1671.

In *Helms v. Holmes*, (C.C.A. 4th) 129 F. (2d) 263, 50 A.B.R. (N.S.) 133, 141 A.L.R. 1367, the court said: "It must be remembered that a discharge in bankruptcy is neither a payment nor an extinguishment of debts. It is simply a bar to their enforcement by legal proceedings. \* \* \*

Thus, the bankrupt is merely given a personal defense which is waived if he chooses not to avail himself of it. This rule that a failure so to plead operates in law as a waiver of the defense has been uniformly followed by state and federal courts alike."

In a case decided recently in the Seventh Circuit, the foregoing case was cited with approval. The court then said: "A discharge is neither a payment nor an extinguishment of a debt. [17] When properly pleaded, it is a bar to the enforcement of an existing debt by legal proceedings and, thus, it amounts merely to a personal defense which is waived if the debtor chooses not to avail himself of it. A discharged debt may be renewed by a new promise and, even though a state court is advised of a discharge, in the absence of a plea setting up the defense, it has a right to assume either that the bankrupt has renewed his debt by a new promise or that, by his silence, he tacitly exhibits an intent to waive the defense. We know of no basis upon which a court of equity can relieve a defendant from liability because of this failure to plead a personal defense where no ground for the intervention of equity is presented." In *re Innis*, (C.C.A. 7th) 140 F. (2d) 479, 55 A.B.R. (N.S.) 427; cert. den. 64 S. Ct. 1048.

With due deference to the authorities cited by bankrupt's counsel to support his contention that the promise to pay a discharged debt creates an altogether new obligation, separate and distinct from the discharged debt, it is respectfully sug-



gested that perhaps the reasoning of these decisions are based upon a misconception of the function of the new promise necessary to revive a discharged debt. It is true that the decisions universally hold that such a promise must be express, clear and unequivocal. A mere acknowledgment of the debt, or an expression of hope, desire, expectation or intention to pay is insufficient. It must be an express promise to pay a specific debt. A few states, not including Oregon, require the promise to be in writing. However, as we have seen, a discharge in bankruptcy does not extinguish the debt. It merely affords a personal defense in bar which may be waived either by a new promise or a failure to plead it in an action brought upon a discharged debt. Thus the only function of the new promise is to serve as an express waiver of the defense. As most authorities state, it merely revives or renews the legal obligation. It restores the remedy taken away by the discharge. It is the test applied by the court in determining whether the [18] discharge has been waived. No consideration is necessary. In the authorities cited by counsel the courts invoke a moral obligation as the consideration to support the new debt which they seek to create out of the promise to pay the discharged obligation. In this connection Williston states: "The law in most of the United States, as in England, has rejected the principle of moral consideration, even though some exceptional cases of liability on promises made without present consideration may still exist as in the case of promises to pay debts barred

by the Statute of Limitations, or by a discharge in bankruptcy. Such cases are now rested on other grounds and moral consideration as such is held insufficient to support a promise. There can be no question that in most states a plaintiff would invite disaster if he endeavored to support an action on a promise on the theory that the promise was supported by moral consideration without more." Williston on Contracts, Revised Edition, Section 148, Page 522.

The reasoning adopted herein is the same as that pursued by Judge Harrington in *Tubbs v. McCabe* in the Superior Court of Delaware, 165 Atl. 336. There, action was brought upon a judgment on a note which had been scheduled in a bankruptcy of the judgment debtor in Virginia. The only issue is stated as follows: "The defendant does not deny that he expressly promised to pay the plaintiffs' debt but claims that the action must be on the new promise on which their rights are based. He further claims that as such promise was made in the State of Virginia, by the express provisions of a statute of that state such promise, to be effective, must be in writing." The court held that the action was brought properly on the old judgment. The following are pertinent excerpts from the opinion, omitting citations:

"The effect of a discharge in bankruptcy may, therefore, not only be waived by a failure to plead and prove such discharge but it may also be waived by a clear and specific promise to pay made by the bankrupt at any time after his petition is filed. [19]

“In this country it is clear, however, that no new consideration is necessary to support the promise of a bankrupt to pay a debt the mere collection of which has been barred by the Bankruptcy Act.

\* \* \* \* \*

“True, the new promise may, as a general rule, even be conditional and such a promise, if made, is the measure of the plaintiffs’ right whether relied on to raise the bar of the statute of limitations, or in a case where a defendant has been adjudicated a bankrupt (1 Willist. on Contr. Sections 196, 203; 7 Rem. on Bankr. Section 3506); but where the statute of limitations is involved it is well settled in this state that the action should be on the old debt and not on the new promise to pay.

“This can only be on the ground that the defense of the statute is waived and the same general principles naturally apply to promises to pay made by a bankrupt. Restatement of the Law on Contr., vol. 1, Sec. 86; 7 Rem. on Bankr. Sec. 3499.

“In fact, the old theory that the rights of the plaintiffs in such cases are based on a moral consideration has now been very generally exploded. 1 Willist. on Contr. Sec. 148.

“It is true that for some reason a specific promise to pay is necessary to remove the bar of the statute in bankruptcy cases while a promise to pay will be inferred from a mere acknowledgement of a subsisting demand where the statute of limitations is involved, but whatever the reason for this differ-

ence may be, it does not affect the rule above stated."

From the facts and the law as we see it, our conclusions are: 1. The debt owing the objecting creditor is the same obligation from which the bankrupt received a discharge in his first bankruptcy. 2. Having waived his discharge as to this debt, he cannot seek a second discharge from the same obligation. To permit him to do so, would be an abuse of process and an imposition upon the court. A qualified discharge is being entered today in which the objecting creditor's debt is excluded on the ground that the bankrupt had been relieved of the obligation under the Bankruptcy Act and had waived his right thereto.

Filed at Portland, Oregon, this 3rd day of March, 1945.

S/ ESTES SNEDECOR,  
Referee in Bankruptcy.

[Endorsed]: Filed March 3, 1945. Estes Snedecor, Referee in Bankruptcy.

[Endorsed]: Filed March 7, 1945. Lowell Mundorff, Clerk. [20]

---

[Title of District Court and Cause.]

### DISCHARGE OF BANKRUPT

At a session of the court of Bankruptcy held in and for the District of Oregon before Estes Snede-

cor, Referee in Bankruptcy, at Portland, Oregon, this 3rd day of March, 1945;

It appearing that Bernard G. Shepherd of Portland, in the County of Multnomah, State of Oregon, was duly adjudged a bankrupt on a petition filed by him on the 16th day of December, 1941; and

It further appearing that, after due notice by mail, objections to the discharge of the said bankrupt were filed and, after due notice by mail, were heard and the first and second specifications were not sustained; the third specification is sustained on the ground that the bankrupt had previously received a discharge from the obligation owing to the objecting creditor and had waived his right thereto under the Bankruptcy Act and cannot seek a second discharge from the same obligation:

Therefore, It Is Ordered that the said Bernard G. Shepherd be, and he hereby is, discharged from all debts and claims which are made provable by said Act against his estate, except such debts as are, by said Act, excepted from the operation of a discharge in bankruptcy, and except the judgment owing to Mildred McDonald on which the bankrupt had waived a discharge obtained in a former bankruptcy.

/s/ ESTES SNEDECOR,

Referee in Bankruptcy.

[Endorsed]: Filed March 3, 1945. Estes Snedecor, Referee in Bankruptcy.

[Endorsed]: Filed March 3, 1945. Lowell Munderff, Clerk. [21]

[Title of District Court and Cause.]

PETITION FOR REVIEW OF REFEREE'S  
ORDER BY JUDGE

To Estes Snedecor, Esq., Referee in Bankruptcy:  
The Petition of Bernard G. Shepherd respectfully  
represents:

1. That your Petitioner is the Bankrupt herein.
2. That, heretofore, this honorable court made an order in the above entitled bankruptcy proceedings fixing the 4th day of May, 1942, as the last day within which specifications of objection to the bankrupt's discharge herein might be filed.
3. That one Mildred Muck, a creditor duly scheduled by the Bankrupt in the above entitled bankruptcy proceedings, did, on the 4th day of May, 1942, file three specifications of objection to the Bankrupt's discharge.

That thereafter the said specifications of objection came on regularly for hearing on the 7th day of August, 1944, and thereupon, and on said date, an order was entered overruling and denying the first and second specification of objection, and the Referee took under advisement the said third specification of objection. That on the third day of March, 1945, an order was duly made and entered herein sustaining the third specification of objection to the Bankrupt's discharge, and giving and granting the Bankrupt a qualified discharge which excepted and excluded from its provisions the operation thereof on the indebtedness of Mildred Muck, said



order being in words and figures, as follows; to-wit:

At a session of the court of Bankruptcy held in and for the District of Oregon before Estes Snedecor, Referee in Bankruptcy, at Portland, Oregon, this 3rd day of March, 1945; [22]

It appearing that Bernard G. Shepherd of Portland, in the County of Multnomah, State of Oregon, was duly adjudged a bankrupt on a petition filed by him on the 16th day of December, 1941; and

It further appearing that, after due notice by mail, objections to the discharge of the said bankrupt were filed and, after due notice by mail, were heard and the first and second specifications were not sustained; the third specification is sustained on the ground that the bankrupt had previously received a discharge from the obligation owing to the objecting creditor and had waived his right thereto under the Bankruptcy Act and cannot seek a second discharge from the same obligation:

Therefore, It Is Ordered that the said Bernard G. Shepherd be, and he hereby is, discharged from all debts and claims which are made provable by said Act against his estate, except such debts as are, by said Act, excepted from the operation of a discharge in bankruptcy, and except the judgment owing to Mildred McDonald on which the bankrupt had waived a discharge obtained in a former bankruptcy.

That the said order is erroneous for the following reasons:

1. That the Referee erred in finding and holding that the debt owing by the Bankrupt to Mildred Much, being a judgment entered against the Bankrupt on the 7th day of August, 1935, and scheduled by the Bankrupt in his voluntary petition in bankruptcy herein, is the same debt as the debt owing to Mildred McDonald, now Mildred Muck, by the Bankrupt herein and scheduled by him in his petition in bankruptcy filed June 27, 1931.

2. That the Referee erred in finding and holding that because the Bankrupt herein by making a new promise to Mildred McDonald, now Mildred Muck, to pay her the indebtedness from which he was discharged in his bankruptcy proceedings initiated June 27, 1931, followed by a judgment in favor of Mildred Muck entered the 7th day of August, 1935, waived his right to a discharge from said judgment in the present bankruptcy proceedings.

3. That the referee erred in finding and holding that the Bankrupt herein was not entitled to a discharge from the indebtedness owing the said Mildred Muck, and duly scheduled in this bankruptcy proceedings, for the reason that the Bankruptcy Act of the United States, which was in full force and effect at the time of the adjudication [23] in these proceedings, expressly provides that the Bankrupt is entitled to a discharge from all of his provable debts, unless he has committed one of the acts expressly set forth in Section 14 of said Bankruptcy Act, it not being claimed in the specifications of objection filed by the said Mildred Muck that any of



such prohibitive acts had been committed by said bankrupt.

4. That the Referee erred in finding and holding that the Bankrupt was not entitled to a discharge from the indebtedness due Mildred Muck duly scheduled in these proceedings and duly proved by the said Mildred Muck.

5. That the Referee erred in finding and holding that the Bankrupt waived his discharge on the indebtedness of Mildred Muck, duly scheduled in these bankruptcy proceedings, for the reason that there is no evidence in the record produced before the Referee by said objecting creditor, which proves, or tends to prove, or show, that the Bankrupt waived his discharge in this proceeding on the indebtedness of Mildred Muck.

6. That the Referee erred in failing to sustain the Bankrupt's motion to strike the third specifications of objection filed by Mildred Muck in these proceedings.

7. That the Referee erred in finding and holding that the Bankrupt herein was not entitled and could not seek a second discharge from the same obligation owing Mildred McDonald, now Mildred Muck, as that scheduled in his first bankruptcy proceeding filed June 27, 1931.

8. That the Referee erred in finding and holding that to allow a discharge in these proceedings from the indebtedness owing Mildred Muck would be an abuse of process and an imposition on this court, for the reason that the Bankrupt is entitled, as a matter of right under the Bankruptcy Act of

the United States to a discharge from said indebtedness.

9. That the Referee erred in entering a qualified and [24] restricted order of discharge, instead of granting a complete and full discharge to the Bankrupt herein from all of his provable debts, as provided by the Bankruptcy Act of the United States.

10. That the Referee erred in finding and holding that the Bankrupt waived all rights under the Bankruptcy Act of the United States at any time whatsoever, so far as the indebtedness of Mildred Muck is concerned, by making a promise to pay the indebtedness of Mildred Muck after the same had been discharged in his first bankruptcy proceedings of June 27, 1931.

11. That the Referee erred in finding and holding that the Bankrupt, in this proceeding initiated more than six years after his discharge in the bankruptcy proceedings initiated June 27, 1931, had no legal right to schedule an indebtedness due and owing Mildred Muck, and thereby obtained a discharge in this bankruptcy proceedings from said indebtedness.

12. That the Referee erred in finding and holding that the new promise made by the Bankrupt to pay the indebtedness of Mildred Muck theretofore discharged in his bankruptcy proceedings in June 27, 1931, made said indebtedness and any further judgment thereafter rendered thereon a nondischargeable debt in any future, valid bank-

ruptcy proceedings initiated by or against the Bankrupt.

Wherefore, your petitioner prays for a review of said order by the Judge, and that said order be vacated and set aside and that a new order be entered herein giving and granting the Bankrupt herein a full and complete discharge from all of his provable debts scheduled in this proceedings, including the indebtedness owing the objecting creditor, Mildred Muck.

Dated this 7th day of March, 1945.

BERNARD G. SHEPHERD,  
Petitioner.

COAN & ROSENBERG,  
Attorneys for Petitioner. [25]

United States of America,  
County of Multnomah,  
State of Oregon—ss.

I, Bernard G. Shepherd, being first duly sworn, on oath say that I am the Petitioner herein; that I have read the foregoing petition and the facts therein set forth are true.

BERNARD G. SHEPHERD.

Subscribed and sworn to before me this 7th day of March, 1945.

[Seal] RALPH A. COAN,  
Notary Public for Oregon.

My commission expires May 19, 1948.

Due and legal service of the foregoing, by receipt of a duly certified copy thereof, as required by law,

is hereby accepted in Multnomah County, Oregon,  
on this 7 day of March, 1945.

W. E. RICHARDSON,  
Attorney for Objecting  
Creditor.

[Endorsed]: Filed March 7, 1945. Estes Snedecor, Referee in Bankruptcy.

[Endorsed]: Filed March 7, 1945. Lowell Mundorff, Clerk. [26]

---

[Title of District Court and Cause.]

### MEMO OF DECISION

The Referee's order is affirmed, and I adopt the Referee's opinion as the opinion of the court on the law of the case.

Dated at Portland, Oregon, this 31st day of July, 1945.

CLAUDE McCOLLOCH,  
Judge.

[Endorsed]: Filed July 31, 1945, Lowell Mundorff, Clerk. [27]

---

[Title of District Court and Cause.]

### ORDER

This cause was heard by the court on the petition of the bankrupt to review an order of the referee qualifying the discharge of the bankrupt, the bank-

rupt appearing by Mr. Quincy L. Matthews and by Mr. Ralph A. Coan, of counsel, and the objecting creditor appearing by Mr. W. E. Richardson, of counsel; and the court having heard the argument of counsel and being fully advised in the premises,

It Is Ordered that the opinion of the referee in this cause be and the same is hereby adopted as the opinion of this court, and it is

Further Ordered That the Order of the referee discharging the bankrupt with qualifications, filed in the office of the Clerk on March 3, 1945, be and the same is hereby in all respects affirmed.

CLAUDE McCOLLOCH,  
Judge.

[Endorsed]: Filed August 1, 1945. Lowell Mundorff, Clerk. [28]

---

[Title of District Court and Cause.]

#### NOTICE OF APPEAL

Notice is hereby given that Bernard G. Shepherd, bankrupt herein, hereby appeals to the Circuit Court of Appeals for the Ninth Circuit from an Order dated August 1, 1945, affirming the Order of the Referee in Bankruptcy discharging the bankrupt with qualifications, which last mentioned or-

der was filed in the office of the Clerk on the third day of March, 1945.

RALPH A. COAN,

Attorney for Bernard G.  
Shepherd, Bankrupt-  
Appellant.

[Endorsed]: Filed August 20, 1945. Lowell Mundorff, Clerk. [29]

---

[Title of District Court and Cause.]

BOND ON APPEAL

Know All Men by These Presents, that we, Bernard G. Shepherd, as principal and National Surety Corporation, incorporated under the laws of the State of New York, as surety, are held and firmly bound unto Mildred Muck in the sum of \$250.00 for the payment of which well and truly to be made we bind ourselves, our administrators, successors and assigns, jointly and severally firmly by these presents.

Sealed with our seals and dated this 20th day of August, 1945.

Whereas, an order was entered herein on the first day of August, 1945, in the above entitled bankruptcy proceedings wherein Bernard G. Shepherd was bankrupt and Mildred Muck was objecting creditor, which said order affirmed an order made by Estes Snedecor, Referee, discharging the bankrupt

with qualifications, and the said Bernard G. Shepherd did on the 20th day of August, 1945, file Notice of Appeal from said order as required by law, and

Whereas, a bond for costs on appeal in the sum of \$250, is required by law to be filed with the said notice.

Now, therefore, the condition of this obligation is such that if the said Bernard G. Shepherd shall pay all costs which may be awarded if the said appeal is dismissed or the said order affirmed, and such costs as the Appellate Court may award if the said order is modified. [30] then this obligation shall be void, otherwise the same shall be and remain in full force and virtue.

BERNARD G. SHEPHERD,  
Principal.

NATIONAL SURETY  
CORPORATION.

By W. B. GILHAM,  
Attorney-in-Fact.

Countersigned:

By W. B. GILHAM,  
Resident Agent.

[Endorsed]: Filed August 20, 1945, Lowell Mundorff, Clerk. [31]



[Title of District Court and Cause.]

DESIGNATION OF THE PORTIONS OF THE  
RECORD AND PROCEEDINGS TO BE  
CONTAINED IN THE RECORD ON AP-  
PEAL.

Bernard G. Shepherd, Appellant, hereby designates the following portions of the record to be contained in the record on appeal herein to the Circuit Court of Appeals for the Ninth Circuit.

1. Certificate of Referee on Petition of Bankrupt for Review of Referee's Order Qualifying Bankrupt's Discharge.

2. Specifications of Objections to Discharge and Petition for Refusal.

3. Order Denying First and Second Specifications of Objection to Bankrupt's Discharge.

4. Motion to Strike Third Specification of Objection and Order Denying Motion.

5. Referee's Opinion.

6. Referee's Order Discharging Bankrupt with Qualifications.

7. Petition for Review of Referee's Order.

8. Memo Decision of District Judge.

9. Order of District Court Affirming Referee's Order Discharging Bankrupt with Qualifications.

10. Notice of Appeal.

11. Bond on Appeal.

12. The following exhibits: Objector's Exhibits 1 and 2 and Bankrupt's Exhibits 6 and 7.

13. This designation of Portions of Record.

RALPH A. COAN,

Attorney for Bernard G. Shepherd, Bankrupt-Appellant.

[Endorsed]: Filed August 22, 1945. Lowell Mundorff, Clerk. [32]

---

[Title of District Court and Cause.]

STATEMENT OF POINTS ON WHICH APPELLANT INTENDS TO RELY ON APPEAL.

Bernard G. Shepherd, who has filed a Notice of Appeal in this Court to the Circuit Court of Appeals for the Ninth Circuit from an Order made and entered on the first day of August, 1945, affirming an Order of the Referee in Bankruptcy discharging the Bankrupt with qualifications, will rely on the following points on said appeal.

That said Order is erroneous and should be reversed for the following reasons:

1. That the District Court erred in finding and holding that the debt owing by the Bankrupt to Mildred Muck, being a judgment entered against the Bankrupt on the 7th day of August, 1935, and scheduled by the Bankrupt in his voluntary petition herein, is the same debt as a debt owing to Mildred McDonald, now Mildred Muck, and scheduled

in the Bankrupt's petition and bankruptcy filed June 27, 1931.

2. That the District Court erred in finding and holding that the Bankrupt waived his right to a discharge in the present bankruptcy proceedings from a judgment obtained by Mildred Muck on the 7th day of August, 1935, based upon a new promise to pay the indebtedness from which Bernard G. Shepherd was discharged in his bankruptcy proceedings filed June 27, 1931.

3. That the District Court erred in finding and holding that Bernard G. Shepherd, Bankrupt herein, was not entitled to a discharge from the indebtedness owing Mildred Muck which was duly [33] scheduled in these proceedings for the reason that the Bankruptcy Act of the United States expressly provides that a bankrupt is entitled to a discharge from all his provable debts unless he has committed one or more of the acts enumerated in Section 14 (c) of the Bankruptcy Act.

4. That the District Court erred in finding and holding that the Bankrupt was not entitled to a discharge from the indebtedness owing Mildred Muck duly scheduled, proved and allowed in these proceedings.

5. That the District Court erred in refusing to sustain Bankrupt's motion to strike the third specification of the objection filed by Mildred Muck, objecting creditor, in opposition to Bankrupt's discharge.

6. That the District Court erred in finding and holding that Bernard G. Shepherd, Bankrupt, was

not entitled to and could not seek a second discharge from the same obligation owing Mildred McDonald, now Mildred Muck, as that scheduled in his first bankruptcy proceeding filed June 27, 1931.

7. That the District Court erred in finding and holding that to grant a discharge in this proceeding from the indebtedness owing Mildred Muck would be an abuse of processes and an imposition on the Court for the reason that a Bankrupt is entitled as a matter of right under the Bankruptcy Act to a discharge from all provable debts unless he has committed one of the acts set forth in Section 14 (c) of said Act.

8. That the District Court erred in entering a qualified and restricted order of the discharge instead of granting Bankrupt a complete and full discharge from all his provable debts.

9. That the District Court erred in finding and holding that Bankrupt waived all rights under the Bankruptcy Act to at any time whatsoever obtain a discharge upon the indebtedness of Mildred Muck by making a promise to pay said indebtedness subsequent to [34] the discharge entered in Bankrupt's first bankruptcy proceedings.

10. That the District Court erred in finding and holding that the Bankrupt had no right to schedule in this proceeding an indebtedness due and owing Mildred Muck because said indebtedness was discharged in his former bankruptcy proceeding.

11. That the District Court erred in finding and holding that the new promise made by Bankrupt to pay the indebtedness of Mildred Muck thereto-

fore discharged in his bankruptcy proceedings of June 27, 1931, made said indebtedness and any judgment obtained thereon a non-dischargeable debt in any valid bankruptcy proceedings filed by or against the Bankrupt at any time thereafter.

12. That the District Court erred in entering an order adopting the opinion of the Referee as the opinion of the District Court and in affirming the order of the Referee discharging the Bankrupt with qualifications.

RALPH A. COAN,

Attorney for Bernard G.

Shepherd, Appellant [35]

---

[Title of District Court and Cause.]

### AFFIDAVIT OF SERVICE

State of Oregon, County of Multnomah—ss.

I, Ralph A. Coan, being duly sworn, deposes and say that I did on the 22d day of August, 1945, at the hour of 11:00 A. M., of said day, mail to W. E. Richardson, attorney for Mildred Muck, objecting creditor, addressed to his office, Alisky Building, Portland, Oregon, that being his last known address, a full true and correct copy of Bernard G. Shepherd, Appellant's "Designation of the Portion of the Record and Proceedings to be Contained in the Record on Appeal" and also "Statement of Points on which Appellant Intends to Rely on Appeal," certified to by me as being full, true and correct copies of the originals, as provided by Rule 5 (b) of the Rules of

Civil Procedure of the District Court of the United States.

RALPH A. COAN

Subscribed and sworn to before me this 22d day of August, 1945.

(Seal)

BURTON L. COAN,

Notary Public for Oregon.

My commission expires August 26, 1946. [36]

---

OBJECTOR'S EXHIBIT No. 1

Book 568, page 52.

No. 114-088

In the Circuit Court of the State of Oregon  
for the County of Multnomah

MILDRED McDONALD,

Plaintiff

vs.

B. G. SHEPHERD and LORENZO MANSFIELD,  
Defendant.

JUDGMENT

Be it remembered that this cause came on for hearing on the 6th day of February, 1935, before Honorable Robert Tucker, one of the judges of the above entitled Court. The plaintiff appearing in person and by her attorneys, Frank E. Manning and Robert G. Smith, the defendant B. G. Shepherd appearing in person and by Paul M. Long and Christopherson & Matthews, and the defendant Lorenzo Mansfield not having been served with process appearing neither in person nor by counsel.



Twelve persons legally qualified were examined and sworn to try the case. After the opening statements of attorneys, the introduction of testimony, the closing arguments and the instructions of the court, the jury retired to consider of its verdict. After being out for a time the jury returned into court and presented its verdict as follows:

“We the jury in the above entitled cause find for the plaintiff and against the defendant B. G. Shepherd in the sum of \$2543.95 with interest thereon from June 10, 1930, at the rate of six per cent per annum.

OTTO EKLUND,

Foreman of the Jury.”

“Dated Feb. 6, 1935.

Said verdict was duly received and filed and the jury discharged from further consideration of this cause.

Pursuant to said verdict and the law, it is now and hereby ordered and adjudged that Mildred McDonald do have and recover of and from B. G. Shepherd the sum of \$2543.95 with interest thereon at the rate of 6% per annum, together with her costs and disbursements therein, amounting to the sum of \$. . . . to be taxed.

ROBERT TUCKER,

Judge.

Dated February 7th, 1935.

Judgment docketed Feb. 7, 1935, Book 31, page 207. [37]



No. 26745

State of Oregon, County of Multnomah—ss.

I, A. A. Bailey, County Clerk and Ex Officio Clerk of the Circuit Court of the State of Oregon for the County of Multnomah, a Court of Record, do hereby certify that the foregoing copy of Judgment (Mildred McDonald, Plaintiff, vs. B. G. Shepherd and Lorenzo Mansfield, Defendants) No. 114-088, has been compared by me with the original and that it is a correct transcript therefrom, and of the whole of such original Judgment, as the same appears of record in my office and in my custody.

In Testimony Whereof, I have hereunto set my hand and affixed the seal of said court, this 7th day of January, A. D. 1942.

(Seal)

A. A. BAILEY,  
County Clerk.

By MARY DUNKIN,  
Deputy. [38]

\$148.50

Sept. 25, 1929

60 days after date, without grace, we promise to pay to the order of M. McDonald at Portland, Ore., One Hundred Forty-eight and 50/100 Dollars, in Gold Coin of the United States of America, of the present standard value, with interest thereon in like Gold Coin, at the rate of            per cent. per from            until paid, for value received. Interest to be paid Without Int. and if not so paid, the whole sum of both principal and interest to become immediately due and collectible, at the option of the holder of this note. And in case suit or action is institut-

ed to collect this note, or any portion thereof, promise and agree to pay, in addition to the costs and disbursements provided by statute, such additional sum, in like Gold Coin, as the Court may adjudge reasonable, for attorney's fees to be allowed in said suit or action.

LORENZO MANSFIELD

STUDIOS

B. G. SHEPHERD,

Secty & Tr.

\$192.50

Sept. 25, 1929

60 days after date, without grace, we promise to pay to the order of M. McDonald—at Portland, Oregon, One Hundred Ninety-two and 50/100 Dollars, in Gold Coin of the United States of America, of the present standard value, with interest thereon in like Gold Coin, at the rate of        per cent. per from        until paid, for value received. Interest to be paid Without Interest and if not so paid, the whole sum of both principal and interest to become immediately due and collectible, at the option of the holder of this note. And in case suit or action is instituted to collect this note, or any portion thereof,        promise and agree to pay, in addition to the costs and disbursements provided by statute, such additional sum, in like Gold Coin, as the Court

may adjudge reasonable, for attorney's fees to be allowed in said suit or action.

No.

LORENZO MANSFIELD  
STUDIS  
B. G. SHEPHERD,  
Secty.

\$187.00

October 9, 1929

90 days after date, without grace, we promise to pay to the order of M. McDonald at Portland, Oregon,                   Dollars, in Gold Coin of the United States of America, of the present standard value, with interest thereon in like Gold Coin, at the rate of           per cent. per           from           until paid, for value received. Interest to be paid Without Interest and if not so paid, the whole sum of both principal and interest to become immediately due and collectible, at the option of the holder of this note and in case suit or action is instituted to collect this note or any portion thereof, promise and agree to pay, in addition to the costs and disbursements provided by statute, such additional sum, in like Gold Coin, as the Court may adjudge reasonable, for attorney's fees to be allowed in said suit or action.

No.

LORENZO MANSFIELD  
STUDIOS  
B. G. SHEPHERD

\$550.00

Oct. 17, 1929

60 days after date, without grace, we promise to pay to the order of M. McDonald—at Portland, Oregon, Five Hundred Fifty Dollars, in Gold Coin of the United States of America, of the present standard value, with interest thereon in like Gold Coin, at the rate of        per cent. per        from until paid, for value received. Interest to be paid No int. and if not so paid, the whole sum of both principal and interest to become immediately due and collectible, at the option of the holder of this note. And in case suit or action is instituted to collect this note, or any portion thereof,        promise and agree to pay, in addition to the costs and disbursements provided by statute, such additional sum, in like Gold Coin, as the Court may adjudge reasonable, for attorney's fees to be allowed in said suit or action.

No.

LORENZO MANSFIELD  
STUDIOS

B. G. SHEPHERD,  
Secty.

\$400.00

Feb. 5, 1930

90 days after date, without grace, we promise to pay to the order of M. McDonald at Portland, Oregon, Four Hundred Dollars, in Gold Coin of the United States of America, of the present standard value, with interest thereon in like Gold Coin, at the rate of 7 per cent. per annum from date until paid, for value received. Interest to be paid.

and if not so paid, the whole sum of both principal and interest to become immediately due and collectible, at the option of the holder of this note. And in case suit or action is instituted to collect this note, or any portion thereof,                      promise and agree to pay, in addition to the costs and disbursements provided by statute, such additional sum, in like Gold Coin, as the Court may adjudge reasonable, for attorney's fees to be allowed in said suit or action.

No.

B. G. SHEPHERD

LORENZO MANSFIELD

Be It Remembered, that at a regular term of the Circuit Court of the State of Oregon for the County of Multnomah, begun and held at the County Court House in the City of Portland, in said County and State, on Monday, the 4th day of February, A .D. 1935, the same being the First Monday, in said month, at the time fixed by law for holding a regular term of said Court.

Present, Hons. Jacob Kanzler, James W. Crawford, Robert Tucker, Hall S. Lusk, Louis P. Hewitt, James P. Stapleton, George Tazwell, John P. Winter, and Clarence H. Gilbert, Judges.

Whereupon, on this Thursday, the 7th day of February, A. D. 1935, the same being the 4th judicial day of said term of Court, among other proceedings, the following was had, towit:

## Proof of Claim By Individual

Form No. 28.

In the District Court of the United States  
for the District of Oregon

In Bankruptcy—No. B-26580

In the Matter of

BERNARD G. SHEPHERD

State of Oregon, County of Multnomah—ss.

I, Mildred Muck, formerly Mildred McDonald of No. 6330 S. E. 36th Street, in Portland, County of Multnomah, State of Oregon, being duly sworn, deposes and says:

1. That Bernard G. Shepherd, the above named bankrupt, was at and before the filing by (or against) him/it of the petition for adjudication of bankruptcy, and still is, justly and truly indebted (or liable) to said deponent in the sum of \$2543.95.

2. That the consideration of said debt (or liability) is as follows: Money loaned to the bankrupt which claim has been reduced to judgment, with interest thereon from June 10, 1930, at 6% per annum plus \$32.25 cost as shown by cost bill on file in said Court with interest thereon at the rate of 6% per annum from February 7, 1935.

3. That no part of said debt (or liability) has been paid, except

4. That there are no set-offs or counterclaims to said debt (or liability except

5. That deponent does not hold, and has not, nor has any person by his order, or to his knowledge or



belief, for his use, had or received any security or securities for said debt (or liability), except

6. (If the debt or liability is founded upon an instrument of writing:) That the instrument upon which said debt (or liability) is founded is attached hereto (or is lost or destroyed, as set forth in the affidavit attached hereto).

7. (If the debt is founded upon an open account): That the said debt was (or will become) due on February 7, 1935 (or that the average due date thereof is ): that no date or other negotiable instrument has been received for such [39] account or any part thereof (or that the said debt is evidenced by a note (or other negotiable instrument), which is attached hereto); and that no judgment has been rendered thereon, except that said claim was reduced to judgment in the Circuit Court, Multnomah County, Oregon, on the 7th day of January, 1935, Clerk's No. 114-088, a cerified copy of which said judgment is hereto attached and made a part hereof.

**MILDRED MUCK**

Creditor

Subscribed and sworn to before me this 12th day of Jan., 1942

(Seal)

**NELSON A. FROST,**

Notary Public for Oregon

My Commission expires June 9, 1945



## POWER OF ATTORNEY

Form No. 18

To Frank E. Manning and Mildred Muck:

I, Mildred Muck, of Portland, in the County of Multnomah, State of Oregon, do hereby authorize you, or any of you, with full power of substitution, to attend all meetings of creditors of the bankrupt aforesaid, and all adjournments thereof, at the places and times appointed by the Court, and for me and in my name to vote for or against any proposal or resolution that may be then submitted under the Act of Congress relating to bankruptcy, to vote for a trustee or trustees of the estate of the said bankrupt and for a committee of creditors, to accept any arrangement or wage-earner's plan, proposed by said bankrupt in satisfaction of his debts, and to receive payment of dividends, and payment or delivery of money or of other consideration due me under such arrangement or wage-earner's plan, and for any other purpose in my interest whatsoever; and with like powers to attend and vote at any other meeting or meetings of creditors, or sitting or sittings of the court, which may be held therein for any of the purposes aforesaid.

In witness whereof I have hereunto signed my name and affixed my seal the 6th day of January, 1942.

(Seal)

MILDRED MUCK

Formerly Mildred McDonald,  
Claimant.

Signed, sealed and delivered in the presence of

-----

Acknowledged before me this 6th day of Jan.,  
1942.

(Seal)

NELSON A. FROST

Notary Public for Oregon

My Commission expires June 9, 1945

[Endorsed]: Claim of Mildred Muck, Formerly  
Mildred McDonald. Amount \$2543.95, plus \$32.25  
and interest. [40]

[Endorsed]: Filed Jan. 12, 1942, Estes Snedocar,  
Referee in Bankruptcy.

[Endorsed]: Filed March 7, 1945, Cowell Mun-  
dorff, Clerk.

---

## OBJECTOR'S EXHIBIT 2

Cloyd Rauch

Report

Case No. B-27580

## AGREEMENT

This Agreement made and entered into this 10th  
day of June 1929. By and between Lorenzo Mans-  
field and B. G. Shepherd hereinafter called party of  
the first part. And Mildred McDonald hereinafter  
called party of the Second part. Witnesseth:

That whereas the First party has taken over the  
Van Wie Mansfield Studios, Inc; and are now oper-  
ating and doing business under the firm name of Lo-  
renz Mansfield Studios, with the intention of chang-  
ing the name of the Van Wie Mansfield Studios, Inc;

to that of Lorenz Mansfield Studios, Inc; at an early date and within six months from date hereof.

And Whereas the second party has been interested in the financing of said Lorenz Mansfield Studios as an investment.

It Is Hereby Agreed As Follows: That for and in consideration of mutual promises one to the other and for and in consideration of Fourteen Hundred Dollars (\$1400.00) cash in hand paid by the second party, receipt of which is hereby acknowledged by the first party. The first party hereby agrees to sell a one third interest in the aforementioned Lorenz Mansfield Studios and upon the completion of the change in the name of said company to that of Lorenz Mansfield Studios, Inc; will forthwith issue certificates of stock in said corporation to the second party for one third of the capital stock of said corporation.

In addition to a one third interest in said corporation the second party is to receive the sum of \$14.00) Fourteen dollars per month, payable monthly, as interest and bonus for the use and investment of said principal sum of \$1400.00 aforementioned.

It Is Further Agreed that the second party will further finance the Lorenz Mansfield Studios by maintaining a separate fund in the approximate sum of Eleven Hundred Dollars (\$1100.00) and from time to time advancing to the first party, from said fund, various sums, at her option, to cover cost of materials required to complete the jobs or work which may be under contract or is being completed by said Lorenz Mansfield Studios, Inc.

And for all said moneys so advanced from time to time as aforesaid the first party will execute a promissory note in favor of the second party in the same amount together with interest and bonus equal to 10% and shall secure said note with an assignment of all right title and interest in and to the identical account for which said money is advanced each time. It being understood and agreed that [41] each of said notes with assignment shall be paid and taken up by the first party as soon as they have received payment from the respective customer on each identical job or contract.

It being the mutual agreement and understanding of the parties hereto that in the event of dissolution of the Lorenz Mansfield Studios at anytime prior to the completion of said change in name of said corporation or the issuing of said stock to the second party hereto, then, and in that event, the first party will assign to the second party enough good accounts to make full reimbursement to her for the \$1400.00 originally advanced to the first party aforementioned.

This agreement signed in triplicate this 27th day of August 1929. A. D.

(Seal)                      LORENZO MANSFIELD

(Seal)                      B. G. SHEPHERD

Party of the First part.

(Seal)                      MILDRED McDONALD

Party of the Second part.

[Endorsed]: Filed March 7, 1945. Lowell Mundorff, Clerk. [42]

## BANKRUPT'S EXHIBIT 6

Cloyd Rauch, Reporter. Case No. B27580

District Court of the United States

District of Oregon

No. B 16240 In Bankruptcy

In the Matter of

BERNARD G. SHEPHERD,

Bankrupt.

## DISCHARGE OF BANKRUPT

Whereas, Bernard G. Shepherd of Portland in the county of Multnomah in said District, has been duly adjudged a bankrupt, under the Acts of Congress relating to bankruptcy, and appears to have conformed to all the requirements of law in that behalf.

It Is Therefore Ordered by the Court that said Bernard G. Shepherd be discharged from all debts and claims which are made provable by said Acts against his estate, and which existed on the 26th day of June, A. D. 1931, on which day the petition for adjudication was filed by him; excepting such debts as are by law excepted from the operation of a discharge in bankruptcy.

Witness the Honorable John H. McNary, Judge of said District Court, and the seal thereof, this 21st day of October, A. D. 1931.

(Seal)

G. E. MARSH,

Clerk.

By L. S. ROGERS,

Deputy Clerk.

United States of America, District of Oregon—ss.

I, G. H. Marsh, Clerk of the United States District Court for the District of Oregon, do hereby certify that the foregoing copy of Discharge of Bankrupt, in cause No. B-16240, in the matter of Bernard G. Shepherd, bankrupt has been by me compared with the original thereof, and that it is a correct transcript therefrom, and of the whole of such original, as the same appears of record and on file at my office and in my custody.

In testimony whereof I have hereunto set my hand and affixed the seal of said court at Portland, in said District, this 29th of January, 1935.

(Seal) G. H. MARSH,

Clerk

By L. S. ROGERS,

Deputy Clerk.

[Endorsed]: Filed Mar. 7, 1945. Lowell Munderff, Clerk. [43]

---

## BANKRUPT'S EXHIBIT 7

### Schedule A-3

#### CREDITORS WHOSE CLAIMS ARE UNSECURED

[N. B.—When the name and residence (or either) of any drawer, maker, indorser, or holder of any bill or note, etc., are unknown, the fact must be stated, and also the name and residence of the last holder known to the debtor. The debt due to each creditor



must be stated in full, and any claim by way of set-off stated in the schedule of property.]

						Amount
						Due or Claimed
						\$ Cts.
*	*	*	*	*	*	*
Mildred McDonald,						
617 Irving Street,						
Portland, Oregon.						
Contracted in 1929 re various notes and						
open account as a partner of Lorenzo						
Mansfield doing business as Lorenzo						
Mansfield Studios						2600 00
*	*	*	*	*	*	*

BERNARD G. SHEPHERD  
Petitioner. [44]

United States of America, District of Oregon—ss.

I, G. H. Marsh, Clerk of the United States District Court for the District of Oregon, do hereby certify that the foregoing copy of Schedule A-3 of the schedules in cause No. B-16240, in the matter of Bernard G. Shepherd, bankrupt, in so far as the same relates to Mildred McDonald, a creditor of said bankrupt, has been by me compared with the original thereof, and that it is a correct transcript therefrom and of the whole of such original in so far as the same relates to said creditor, as the same appears of record and on file at my office and in my custody.



In testimony whereof I have hereunto set my hand and affixed the seal of said court at Portland, in said District, this 31st day of January, 1935.

(Seal)               LOWELL MUNDORFF,

Clerk.

By   L. S. ROGERS,

Deputy Clerk.

[Endorsed]:   Filed June 27, 1931; G. H. Marsh,  
Clerk.

---

### CLERK'S CERTIFICATE

United States of America, District of Oregon—ss.

I, Lowell Mundorff, Clerk of the District Court of the United States, for the District of Oregon, do hereby certify: That the foregoing pages numbered from 1 to 44, inclusive, constitute the transcript of record on appeal from an order of said court in a certain bankruptcy cause, No. B26580, in the Matter of Bernard G. Shepherd, Bankrupt, in which said Bernard G. Shepherd is appellant, and Mildred McDonald, now Mildred Muck, is appellee; that said transcript has been prepared by me in accordance with the designation filed by said appellant and in accordance with the rules of court; that I have compared the foregoing transcript with the original record thereof and that the foregoing transcript is a full, true, and complete transcript of the record and proceedings had in said court in said cause, as the same appears of record and on file at my office

and in my custody prepared in accordance with the said designation and rules of court.

I further certify that the cost of the foregoing transcript is \$10.80 and that the same has been paid by the appellants.

In Testimony Whereof, I have hereunto set my hand and affixed the seal of said court, at Portland, in said district, this 8th day of September, 1945.

(Seal)                      LOWELL MUNDORFF,  
Clerk.

By L. S. ROGERS,  
Deputy. [45]

---

[Endorsed]:—No. 11140. United States Circuit Court of Appeals for the Ninth Circuit. Bernard G. Shepherd, Appellant, vs. Mildred McDonald, now Mildred Muck, Appellee. Transcript of Record. Upon Appeal from the District Court of the United States for the District of Oregon.

Filed September 13, 1945.

PAUL P. O'BRIEN,  
Clerk of the United States Circuit Court of Appeals  
for the Ninth Circuit.

United States Circuit Court of Appeals  
for the Ninth Circuit

No. 11140

BERNARD G. SHEPHERD,

Appellant,

vs.

MILDRED McDONALD, now  
MILDRED MUCK,

Appellee.

APPELLANT'S ADOPTION OF STATEMENT  
OF POINTS FILED IN THE DISTRICT  
COURT OF THE UNITED STATES FOR  
THE DISTRICT OF OREGON TO BE RE-  
LIED ON IN HIS APPEAL AND DESIG-  
NATED THE PRINTING OF THE TRAN-  
SCRIPT OF RECORD.

Bernard G. Shepherd, Appellant, hereby adopts for the purposes of this Appeal, the Statement of Points to be relied on as filed in the District Court of the United States for the District of Oregon, and which appear in the Transcript of Record certified to by the District Court of the United States for the District of Oregon and filed in the above-entitled Court.

Appellant hereby designates the entire Transcript of Record to be printed in this Appeal as provided by Subdivision 6, of Rule 19 of the above-entitled Court.

COAN & ROSENBERG,  
RALPH A. COAN,  
Attorneys for Appellant.

(Acknowledgment of Service attached.)

[Endorsed]: Filed Sept. 25, 1945. Paul P.  
O'Brien, Clerk.